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PC217/A-91-

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA TRANSPORTATION REGULATION BOARD

In the Matter of the Petition of
Arnold Molus, d/b/a Molus Trucking,
Route 1, Box 129, Bowlus, MN 56314
for a Petroleum Carrier Certificate
CONCLUSIONS

FINDINGS OF FACT,

to Transport Petroleum Products from
the Counties of Anoka, Carver, Dakota,
Hennepin, Ramsey, Scott, and Washington to
Points in Minnesota for the account of
Tri-City Paving, Inc. of Little Falls,
Minnesota

AND RECOMMENDED ORDER

The above-entitled matter came on for hearing before Administrative Law Judge, Phyllis A. Reha at the Morrison County Courthouse, Little Falls, Minnesota on January 28, 1992.

Samuel Rubenstein, ICC Practitioner, Freight Transportation Consultants, Inc., 6960 Madison Avenue West, P. O. Box 5, Minneapolis, Minnesota 55440 appeared on behalf of the Petitioner, Arnold Molus, d/b/a Molus Trucking (Petitioner or Molus). Robert S. Lee, Mackall, Crounse and Moore, attorneys at law, 1600 TCF Tower, 121 South Eighth Street, Minneapolis, Minnesota 55402 appeared on behalf of Protestants, Dahlen, Transport, Inc. (Dahlen); Kane Transport, Inc. (Kane); Transport, Inc. (Transport); and Wayne Transports, Inc. (Wayne).

The record closed on February 5, 1992, the date of receipt by the Administrative Law Judge of the final post-hearing memorandum.

Notice is hereby given that, pursuant to Minn. Stat. 14.61, and the Rules of Practice of the Public Utilities Commission, as applicable to the Transportation Regulation Board, and the Rules of the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Transportation Regulation Board, Minnesota Administrative Truck Center, 254 Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota 55075. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Board may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as its final order.

STATEMENT OF ISSUES

The issue to be determined in this proceeding is whether Petitioner has demonstrated, pursuant to Minn. Stat. 221.071, subd. 1 (1990), the statutory prerequisites for the grant of a petroleum carrier certificate for the transportation of group C petroleum products including black oil and asphalt from the Counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington for the account of Tri-City Paving, Inc. of Little Falls, Minnesota.

Based upon all the proceedings herein, the administrative law judge makes the following:

FINDINGS OF FACT

1. On July 18, 1991, Petitioner, Arnold Molus, d/b/a Molus Trucking filed a petition for a petroleum carrier certificate of public convenience and necessity pursuant to Minn. Stat. 221, with the Minnesota Transportation Regulation Board (Board). The petition is in all respects proper as to form and content.
2. On July 26, 1991, the Board published notice of the petition in its weekly calender, setting a protest date of August 15, 1991.
3. Prior to the August 15, 1991, protest deadline, protests were filed to the petition by Dahlen, Kane, Transport, Wayne, and Indianhead Truckline, Inc. (Collectively referred to as Protestants).
4. The Board scheduled a contested case hearing to commence on January 28, 1992, and sent notices of said hearing to all the parties of record and published a copy of such notice in its weekly calendar of hearings dated December 13, 1991. The contested case hearing was conducted as scheduled. Protestant, Indianhead Truckline, Inc. did not appear at the hearing to offer any evidence in opposition to the petition. All of the other Protestants did appear.
5. Prior to the conclusion of the hearing, the Petitioner amended its petition to request a petroleum carrier certificate to transport only Group C petroleum products (asphalt or black oil) from the named counties for the account of Tri-City Paving, Inc. Prior to the amendment, the Petitioner had requested petroleum carrier certificate to transport all petroleum products. The Protestants had no objections to the amendment. This report will only address the petition as amended.

Arnold Molus, d/b/a Molus Trucking

6. Arnold Molus, owns and operates Molus Trucking, which is a business related to transportation of petroleum products. His principle place of business is Route 1, Box 129, Bowlus, Minnesota 56314.
7. The Petitioner currently holds no Minnesota intrastate authority from the Board. The Petitioner does hold an Interstate Commerce Commission (ICC) certificate of public convenience and necessity to operate as a common carrier in interstate commerce over irregular routes, transporting food and other edible products and byproducts, intended for human consumption (except alcoholic beverages and drugs) agricultural limestone and fertilizers and other soil conditioners between all points in the United States (except Alaska and Hawaii.) (Permit # MC170822)
- B. The Petitioner also holds ICC permit authority to engage in transportation as a contract carrier in interstate commerce over irregular routes, transporting general commodities, between points in the United States (except Alaska and Hawaii) under continuing contracts with commercial shippers or receivers of such commodities. (Permit MC #170822 Sub (1)).
9. The Petitioner currently owns eight (8) tractors and nine (9) trailers, five (5) of which are insulated tankers suitable for transportation of black oil. Seven of the eight tractors are Kenworth and one is a Peterbuilt. Four of the insulated tankers are Freuhauf and one is a Butler. The tankers each have a capacity of between 6500 gallons and 7500 gallons. None of these tankers are capable of hauling group A or group B (light oil) petroleum products. All of the Petitioner's equipment is well maintained and meet the applicable state and federal safety standards. The Petitioner has his own maintenance shop on his premises and his vehicles are regularly maintained and serviced. The Petitioner maintains public liability insurance and property damage insurance in at least the minimum amounts required by the Department of Transportation.
10. The Petitioner's personal and financial statement shows current assets of \$347,500 of which \$40,000 is cash on hand or in banks. The Petitioner has total liabilities of \$44,782.22 and a total net worth of \$302,717.78. The Petitioner's financial statement is accurate as of June 20, 1991. The Petitioner has the financial resources to fund the proposed operations.
11. Before Arnold Molus started his Molus Trucking business, he was employed as a truck driver for Tri-City Paving, Inc. (Tri-City) the account for which the Petitioner is seeking authority to serve on an intrastate basis in Minnesota. Currently, the Petitioner dedicates all of his equipment to serve the needs of Tri-City on an interstate

basis under Petitioner's interstate authorities. All of the Petitioner's vehicles are lettered with Tri-City's name. The Petitioner only hauls black oil for the account of Tri-City on a seasonal basis.

12. Black oil is a group C petroleum Product. It is a refined oil byproduct from which petroleum has been removed. It must be kept at least 240 degrees fahrenheit. As the temperature drops below that point, it begins to solidify. Black oil is used in asphalt and blacktop operations in Minnesota from early spring through the fall. The Petitioner does not haul any light oil petroleum products.
13. Currently, the Petitioner hauls black oil primarily from the Murphy Oil Company in Superior, Wisconsin to Tri-City's permanent plant in Little Falls, Minnesota, or to one of its three "mobile plants" which are stationed at various construction sites in Minnesota. Delivery of product directly to a mobile plant allows the construction crew to have product on hand while waiting for more product from the refinery.
14. The Petitioner offers 24-hour service and his drivers are trained to unload the product into tanks on Tri-City premises. The drivers have keys and are trained and familiar with Tri-City's equipment and premises. Because the drivers have keys, are trained and are familiar with the premises, it is not necessary for Tri-City to have any of its own employees present to assist the unloading of the product.

Tri-City Paving, Inc.

15. Tri-City is a paving contractor that enters into contracts for highway and street maintenance with the State of Minnesota and various counties and cities within Minnesota. Lawrence Otramba is the vice president of Tri-City and has been employed as vice president for approximately 38 years. As vice-president, he is responsible for the general management of Tri-City, including ordering and delivery of product.
16. Tri-City has its own private trucking fleet of between 35 and 40 units. Tri-City uses its own fleet of trucks primarily for delivery of product from origin points in the Twin Cities metropolitan area. These origin points include the Koch Refinery in Pine Bend, Minnesota; the Richards Refinery in Savage, Minnesota; and the Ashland Refinery in St. Paul Park, Minnesota. Koch and Richards are in Dakota County; Ashland is in Ramsey County.
17. Tri-City currently uses the Petitioner for delivery of all its product that originates outside of the State of Minnesota. Currently, the primary origin point is the Murphy Company in Superior, Wisconsin.
18. Approximately 90 percent of Tri-City's transportation needs are met by the Petitioner's trucks and Tri-City's own equipment. Tri-City's transportation needs consist of approximately 1200 loads per year. During the construction season, product is transported 24 hours per day.
19. The approximately 10 percent of shipping needs not met by the Petitioner or Tri-City's own fleet is handled by other carriers. These transportation needs consist of approximately 150 loads per year. Tri-City has used Dahlen, Transport, Quickie, Indianhead, Wayne, Loxtercamp, and Kane in the past. However, Tri-City is not satisfied with the services it receives from these other common

carriers.

20. None of the other common carriers utilized by Tri-City have keys to make deliveries during the evenings or at times when Tri-City doesn't have any employees on the premises. The Petitioner has keys to Tri-City's facility, is familiar with its equipment and premises, and is able to make deliveries of product 24 hours per day, including evenings and non-working hours. Because of this specialized service available from the Petitioner, Tri-City does not have to have crew standing by to assist in the unloading of the product at Tri-City's facilities. When Tri-City uses a common carrier other than the Petitioner, it must have crew standing by to assist in the unloading of the product. This is very inefficient and expensive for Tri-City. Tri-City requires a carrier who will consistently use the same drivers so that they become accustomed to making deliveries to not only the permanent facility location but to the mobile plants, which move from site to site during the construction season. It also requires a carrier who can make deliveries of product after hours, by being provided with a key to the premises. Tri-City also needs drivers who are trained and are not restricted from loading and unloading tankers as are some drivers for common carriers.
21. Having a ready supply of product at the construction site is crucial to Tri-City. If product is not available at the construction site, the construction crew sits idle. On one occasion in 1991, a construction site was idle for approximately one month because there was no petroleum available out of Superior, Wisconsin.
22. Each of Tri-City's three mobile plants have a capacity of 35,000 gallons. The permanent storage facility has a capacity of 21,000 to 22,000 gallons or 3 112 tanker loads. The storage capacity available to Tri-City allows it to have product on hand while waiting for more product from the refinery.
23. Tri-City has service needs to all points in the State of Minnesota. However, recently, its service needs have been shifting further south, making it more convenient to bring in product from the Twin Cities metropolitan area rather than Superior, Wisconsin. Thus, Tri-City anticipates an increased shipping need originating from the Twin Cities metropolitan area. If the instant petition is not granted by the Board, Tri-City will have to use common carriers more frequently to meet its transportation needs. Because of the specialized service provided by the Petitioner, Tri-City desires to use the Petitioner's equipment for delivery of product from the Twin Cities metropolitan origin points. Tri-City will still require service from other common carriers as back-up carriers during its busiest times, and its use of other common carriers is not expected to decrease significantly if the petition is granted.
24. If a certificate of public convenience and necessity to haul petroleum products is granted to the Petitioner, Petitioner will be required to charge governing terriffs applicable to Minnesota petroleum carriers.
25. On the occasions when Tri-City cannot use its own fleet of trucks or the Petitioner's equipment when it needs a load of black oil, it will call a jobber locally and request a delivery. The jobber will then

the call a common carrier. Thus, Tri-City has minimal contact with
common carrier it uses. Tri-City did not delineate any specific
problems with the service provide by common carriers, except that
on those occasions when a comon carrier is used to make deliveries,
in Tri-City must have one of its own personnel available to assist
the unloading of the product. Because of this factor, Tri-City
attempts to avoid using common carriers unless absolutely
necessary.
If the certificate of convenience and necessity is denied to the
Petitioner, Tri-City would consider adding equipment to its
private fleet

Protestants

26. Kane Transports, Inc. is located in Sauk Centre, Minnesota, and as
is relevant to the amended petition herein, has authority from the
Board to transport petroleum products, including black oil, from the
origin point of the Twin Cities metropolitan area to all points in
Douglas and Morrison Counties and between all points in Douglas and
Morrison Counties. It also holds authority to transport black oil from
the origin point of Snelling Oil Companies, St. Paul, Minnesota to
approximately 60 Minnesota counties. It also holds authority to
transport group C and D petroleum products to, from, and between
all points in Minnesota, restricted to the service for the accounts
of Starry Construction of Long Prairie, Minnesota and Mid-Minnesota
Hot Mix Company of Annadale, Minnesota (See Protestants Ex. 1). Kane
is a major petroleum carrier in the State Minnesota and holds
extensive authority to transport petroleum products other than black oils
to and from many origin points in the Twin Cities metropolitan area
and other points in Minnesota.

27. Kane has 46 power units which are company owned, and six (6)
power units which are owner-operated. It also has three (3) older
power units which are currently out of service. Among its trailer
transporting equipment, it has 12 pressurized tank units capable of
asphalt. In total, it has approximately 30 trailer units capable
of

equipment handling many different types of petroleum products. Its
equipment list as of December 23, 1991, itemizes the company's total
equipment available for its entire Minnesota intrastate operation.
(Protestants Ex. 2).

28. Kane has terminals in Sauk Centre and Eagan, Minnesota and a few
origin other locations close to its key origin points. Its primary
point for delivery of product is the Koch Refinery in Pine Bend,
Minnesota; the Richards Refinery in Savage, Minnesota; and the
of Ashland Oil Refinery in St. Paul Park, Minnesota. The first two
is these origin points are in Dakota County and the Ashland facility
in Ramsey County. Because of the close proximity of one of its
terminals in Eagan, Kane has the ability to get equipment to the
loading points quickly.

29. Kane provides 24-hour service upon request. However, it will not
evening, deliver product to Tri-City after business hours or in the
of unless Tri-City has an employee present to unload. The reason for
this restriction is safety. Although its drivers are all capable
unloading the product, the company's policy is not to allow its
drivers to do so, unless there is an employee at the location to

monitor and assist in the unloading operation. Black oil can reach temperatures of 280 - 320 degrees fahrenheit and is thick and sticky. There is a significant danger of accident and burning. When a driver attempts to unload product alone, there is no one present to attend to emergency situations.

30 Despite its policy not to deliver a product after business hours unless there is another employee present, Kane does not feel that this restriction is a disadvantage to a shipper such as Tri-City. Kane makes every effort to have the product at the construction site when the product is needed. The key to meeting the needs of the shipper is scheduling. For example, although it will not make after hours deliveries, Kane will deliver product early in the morning prior to the commencement of construction as long as a shipper employee is present to assist.

31. Approximately 10-12 years ago, Tri-City used Kane to deliver product. This was at a time prior to Tri-City purchasing its private transportation fleet. Since that time, Tri-City has not used Kane. Currently, under its existing authority, Kane would be able to service Tri-City's Little Fall's stationary plant, as it is located in Morrison County. However, it would not be able to deliver product to Tri-City's mobile plants (stationed outside of Morrison County) from origin points in the Twin Cities metropolitan area.

32. During the 1991 asphalt paving season, Kane's equipment was not fully utilized. Part of the reason was the limited scope of Kane's authority. Currently, Kane is not servicing the account of any large company needing services on a daily basis. Its highest use of its asphalt equipment is during peak load time of June 15 - September 1. Primarily, Kane backs up proprietary fleets as an "excess carrier". Kane acknowledges that there are times when demand for a product is greater than the transportation industry can provide for.

33. Wayne Transports, Inc., is located in Inver Grove Heights, Minnesota and has authority to transport group C petroleum products, including black oil and asphalt. It has a certificate of public convenience and necessity to haul black oil from the origin points of the Twin Cities metropolitan area to all points in Minnesota. It also holds

authority to transport group C petroleum from non-Twin Cities origin points to points in Minnesota restricted to traffic moving for named accounts in other Minnesota locations. Wayne is considered a large petroleum carrier in the State of Minnesota and holds and extensive authority to transport petroleum products other than black oil to and from many origin points in the State of Minnesota. (Protestants Ex. 3).

34. Wayne owns 92 tractors and leases 40 others as owner-operated. For its black oil or asphalt hauling operations, it uses 49 asphalt trailers. These are insulated tanker trailers capable of maintaining appropriate temperatures so that the product does not solidify.

35. Wayne's terminal is also located in Inver Grove Heights, Minnesota, which is conveniently located near the Koch Refinery (7/10 of a mile), the Ashland Refinery (9 miles), and the Richards Refinery in Savage, Minnesota (31 miles). Wayne provides service frequently from all of these origin points.

36. Wayne has provided service on occasion to Tri-City. Most of the service has been provided through a local jobber who has contacted Wayne for delivery service.
37. Wayne is capable of providing 24-hour-per-day delivery service. Most of its deliveries are single driver deliveries to the customer's plant. Most of the deliveries are made to the site between 6 a.m. and 9 p.m. It prefers to make deliveries when the customer has personnel at the site to assist in the unloading operations for safety reasons. Although Wayne has provided service without customer personnel being present during the delivery, it prefers to avoid this situation and finds that the customer usually prefers to have personnel on site to inspect the product and to safeguard potential injuries to the driver and project site. Accordingly, Wayne attempts to schedule deliveries to ensure that the product is there before the crew leaves the job site or arrange to have the trucks on site prior to construction.
39. Although Wayne currently operates 49 tanker-trailers, it plans to add eight (8) additional units for 1992. The delivery of these additional units has already begun.
40. During the height of the paving season, most of Wayne's trucks are busy, depending upon the weather. Demand is particularly high if there is a sudden price increase and customers want product at the lower price and must have it delivered by midnight. In such circumstances, most common carriers, including Wayne, are extremely busy.
41. Dahlen Transport, Inc. of Newport, Minnesota holds authority to transport all petroleum products, including black oil to, from, in between all points and places in the State of Minnesota.
42. Dahlen has 72 pieces of equipment at its Newport, Minnesota facility. The Newport facility is located within one (1) mile of the Ashland Refinery and the Koch Refinery, and 25 miles from the Richards Refinery in Savage, Minnesota. Of this equipment, it has approximately 20 tractors in operation. However, 14 of the 20 are without license plates because of the lack of business. Four (4) of those power units are for sale. The remaining 10 will be put in service as needed and most likely will be activated in the summer months during the asphalt season. Dahlen has 11 insulated tankers available to haul black oil and asphalt products. (Protestant Ex. 5). In the past three (3) years, it has sold approximately 21 - 22 black oil tankers because of lack of utilization. In 1991 alone, it sold eight (8) tankers.
43. Generally, Dahlen can handle up to five (5) loads of product per day or one (1) every two (2) hours. If a customer were to called 10 a.m. needing a load by 2 p.m., it might not be able to meet that immediate need because of the short notice. It does provide 24-hour unloading; however, Dahlen would require the customer to supply a trained employee on site to assist in the unloading operation.

44. Dahlen has provided service to Tri-City in the past, but not in recent years. It used to be a steady hauler prior to the time Tri-City purchased its own transportation equipment. After that, Tri-City no longer requested service from Dahlen. Dahlen has no record of ever turning down a request for delivery of black oil or asphalt product from any customer in the State of Minnesota.
45. Transport, Inc., made an appearance through its counsel, but offered no testimony.
46. Indianhead Trucking, Inc., made no appearance at the hearing and offered no testimony.

Based upon the foregoing Findings of Fact, the administrative law judge makes the following:

CONCLUSIONS

1. The Transportation Regulation Board has jurisdiction over the subject matter of the hearing.
2. Proper notice of the hearing was timely given and all relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge.
3. Petitioner has demonstrated that it is financially able to conduct the proposed business; that its equipment is properly maintained; and that it is competent; qualified and has the experience necessary to conduct the proposed business. Petitioner is "fit and able" to conduct the proposed operations.
4. Petitioner's vehicles, being regularly maintained and free from defects, are within the safety requirements prescribed by the Department of Transportation.
5. Petitioner has shown that Tri-City Paving, Inc. has a need for the transportation of black oil and asphalt to its permanent facility in Little Falls, Minnesota and its mobile plants at various locations throughout Minnesota, during the asphalt construction season.
6. The common carriers who currently have authority to transport black oil and asphalt products for hire within the area have not demonstrated that they can meet fully the need of Tri-City Paving, Inc.
7. A grant of the authority sought by the Petitioner would have only a negligible effect on the business of the petroleum carriers who currently hold such authority. A grant of the petition herein would not materially effect the financial viability of Protestants so as to jeopardize availability of necessary transportation service to the

public.

8. A grant of the petition herein would have no adverse effect on transportation service being provided by a railroad.

9. The public convenience and necessity require a grant authority to the
Petitioner to transport group C petroleum, including black oil and asphalt from the Counties of Anoka, Carver, Dakota, Hennepin, Ramsey,
Scott, and Washington to points in Minnesota for the account of Tri-City Paving, Inc., of Little Falls, Minnesota.

10. Any Findings of Fact more properly considered a conclusion, is hereby
expressly adopted as such.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

It is a recommendation of the administrative law judge to the Board that it issue the following:

ORDER

It is hereby ORDERED that Arnold Molus d/b/a Molus Trucking is GRANTED a petroleum carrier certificate of public convenience and necessity to transport group C petroleum products, including black oil and asphalt from the Counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington to points in Minnesota restricted to service for the account of Tri-City Paving, Inc. of Little Falls, Minnesota.

Dated: 4th day of March, 1992.

PHYLLIS A. REHA
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Tape recorded

MEMORANDUM

The Petitioner, Arnold Molus d/b/a Molus Trucking must demonstrate both that it is fit and able to conduct the petroleum carrier operations requested and that the public convenience and necessity require a grant of authority. Minn. Stat. V XEG 0LQQ Rule 1400.7300, subpart 5 (1991). Petition of American Freight Systems Inc., 380 N.W. 2nd, 192, 197 Mn. Ct. App., 1986.) There is no substantial question in the record that the Petitioner has the financial capability to conduct the proposed business and

that its equipment meets all safety standards of the Department of Transportation. Furthermore, there is no evidence in the record reflecting adversely on the fitness and ability of the Petitioner. The Petitioner, therefore, is fit and able within Minn. Stat. VXEG DQG Minn. Rule 7800.0100, subpart 4 (1991).

The Petitioner must also establish that the grant of the petition or some portion of it is required by the public convenience and necessity. The term "convenience and necessity" is an elastic phrase not susceptible to a precise definition. *Petition of American Freight Systems Inc.* 380 N.W.2d 192, 196-197, (Mn. Ct. App., 1986).

A finding of convenience and necessity is a finding of fact that must be based on all evidence presented. *Quinn Distributing Company vs. Quast Transfer, Inc.* 288 Minnesota 442, 448, 181 N.W.2d 696, 700 (1970).

It cannot be denied that Protestants herein collectively possess sufficient equipment to transport the asphalt requirements of Tri-City. A finding of adequate service, however does not preclude a grant of additional authority. *Quinn, supra; Dahlen Transport Inc vs. Hahne*, 261 Minnesota 218, 225, 112 N.W.2d 630, 635, (1961).

An appropriate test for determining the requirements of the public convenience and necessity is the multi-factor test adopted by the Public Utilities Commission in *New Ulm Freight Lines Inc.*, RRCC 649/A-75-24 (April 24, 1979). Consideration of at least the following factors is appropriate: Public need for the proposed service; the ability of existing carriers to meet that need; the effect on the existing carriers of a new grant of authority, whether the service offered provides improvements; whether traffic volumes are sufficient for additional carriers; and whether the new service will introduce desirable competition. All considerations of the multi-factor test must be balanced and no single factor is controlling.

Public need for the proposed service is usually established by the testimony of supporting shippers. In this case, Petitioner will provide a personalized service for Tri-City. Its equipment will be lettered with Tri-City's name. It will dedicate that equipment strictly for the use of Tri-City. The Petitioner, headed by a former employee of Tri-City, is familiar with the facilities of Tri-City and its drivers will be provided with a key to make after-hour deliveries. The Petitioner will be able to serve the account with a single driver and Tri-City will not have to hire crew to be on hand for after-hour deliveries. The Petitioner has provided satisfactory service to Tri-City under its interstate authority for many years. The Petitioner can provide personalized service on short notice without regard to making special scheduling arrangements as Tri-City must do with other common carriers. The relationship between Tri-City and the Petitioner will be almost the same type of service as its own private carriage for the transportation of its asphalt needs.

Another important consideration is that a grant of the recommended authority will not divert traffic from existing petroleum carriers. Tri-City has not used Protestants for many years except on a very sporadic basis as a backup carrier. In fact, since converting to its private fleet, it has not used Protestant Dahlen at all. Ninety percent of Tri-City's transportation needs are serviced currently by its own private fleet and the interstate

transportation currently provided by Petitioner. Finally, there is no evidence in the record regarding the operationing ratios of any of the Protestants appearing in this proceeding.

Counsel for Protestants has argued that the Board should not grant a certificate of public convenience and necessity to the Petitioner, who is not requesting to service the needs of the general public, but to dedicate service

to the account of only one shipper, similar to that dedicated service for contract carrier permit authority. Counsel argues that the statutory scheme in Minnesota does not permit contract carriage service for shippers of petroleum products. (See Protestant's letter brief dated Feb. 3, 1992). Counsel has cited no specific authority for that assertion, except his own interpretation of the statute. Counsel further argues that although the Petitioner may be limiting his request for service to only a single account, he could file another application tomorrow for additional accounts or for a broad geographical area any exclusivity of service for this customer is due only to the whim of the Petitioner and the present limitations on his authority." (letter brief at page 2) The Administrative Law Judge could find no case in this jurisdiction nor any Final Order of the Transportation Regulation Board that has considered this specific issue. Quite the contrary, the Administrative Law Judge has found examples of the Board granting petroleum carrier certificate restricted to service rendered for individual shippers. See, e.g. In the Matter_of the Petition of Isaacson's Trucking and Transport Inc., PC 143/A84-350, Order No. I (Board Order issued March 20, 1985). Furthermore, a review of the previous authorities granted by the Board to several of the Protestants herein include petroleum certificate to transport product restricted to the accounts of named shippers. In any event, the Administrative Law Judge believes that there is precedent in Minnesota for the grant of a petroleum certificate restricted to the exclusive dedicated service of a named shipper. The Board may wish to reconsider this policy in light of the arguments raised by Protestants in this case. However, the Administrative Law Judge cannot conclude based upon the statute and the decisions issued by the Board that the Petitioner is not entitled to a grant of petroleum carrier authority to serve a single shipper.

PA